



## INTERIOR BOARD OF INDIAN APPEALS

Peggy M. Scott v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs

54 IBIA 178 (12/14/2011)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ARLINGTON, VA 22203

PEGGY M. SCOTT,	)	Order Vacating and Remanding Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 09-140
EASTERN OKLAHOMA REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	December 14, 2011

The Eastern Oklahoma Regional Director (Regional Director) issued a decision on March 13, 2009 (Decision), in which she upheld a decision by the Bureau of Indian Affairs' (BIA) Okmulgee Agency Acting Superintendent (Superintendent) to encumber, pursuant to the procedures in 25 C.F.R. pt. 115, subpt. E, an Individual Indian Money (IIM) trust account established for Appellant Peggy M. Scott to recover funds allegedly misappropriated by Appellant. We vacate the Regional Director's decision and remand this matter because we are not aware of any legal basis for BIA to establish and deposit into an IIM account unrestricted funds for the purpose of recouping funds due to BIA.

## Background

Josephine Bosen (Josephine), a full-blood Creek Indian, died in January 1987; Appellant is Josephine's niece and "is less than one-half blood of the Five Civilized Tribes [of Oklahoma]." Answer Brief at 10; *see also id.* at 13 (same); Report for Distribution, Aug. 6, 2008, at unnumbered 2 (Administrative Record (AR) Tab 15).<sup>1</sup> At the time of her death, Josephine was receiving royalties on oil and gas leases that she owned in whole or in

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<sup>1</sup> The Five Civilized Tribes of Oklahoma (Five Civilized Tribes) are Creek, Cherokee, Choctaw, Chickasaw, and Seminole tribes. *Hayes v. Chesapeake Operating, Inc.*, 43 IBIA 54, 53 n.2 (2006).

part. After Josephine's death, BIA reports that 23 royalty checks,<sup>2</sup> dated between October 1987 and November 1989 that totaled \$1,535.29, were issued by BIA in Josephine's name and, according to BIA, were cashed by Appellant. Because these checks were drawn on the U.S. Treasury and were due and owed not to Appellant but to Josephine's estate, which was inherited entirely by Josephine's son, Sarkahche Bosen (Sarkahche),<sup>3</sup> BIA attempted unsuccessfully to collect the funds from Appellant between 1990 and 1993. For reasons not disclosed in the record, it appears that no further efforts were made after 1993 to collect the funds from Appellant until 2008.<sup>4</sup> BIA paid to Sarkahche the full amount of the misappropriated royalty checks plus interest for a total of \$5,810.39 (\$1,535.29 principal plus \$4,275.10 interest). AR Tab 12.

In 1988, Josephine's brother, John Bosen (John), died. He left a will, which was approved by BIA and probated by the Oklahoma probate court, that named Appellant as one of his heirs. According to the probate decree, John's estate consisted of funds held in an IIM account and restricted mineral interests. *Estate of John Milton Bosen*, No. PB-2006-764 (Dist. Ct. Tulsa County Feb. 13, 2008) (AR Tab 15). Appellant inherited a 1/6 interest in the funds held in John's IIM account as well as a 1/6 interest in John's interest in three minerals-only properties. *Id.*

Upon learning that Appellant had inherited an interest in funds deposited in John's IIM account, BIA initiated proceedings to offset Appellant's inheritance to recover the funds that it deemed were misappropriated and which BIA paid to Sarkahche, i.e., \$5,810.39. BIA considered holding the funds in an IIM "estate" account created upon John's death or creating a new account for Appellant. *See* Memorandum, May 21, 2008 (AR Tab 11). Apparently, the Superintendent elected to establish an IIM account for Appellant, deposited the funds inherited from John into the account, and, by letter dated July 30, 2008, informed Appellant that BIA proposed to encumber the newly-established account pursuant to 25 C.F.R. pt. 115 to recover the principal and interest owed to

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<sup>2</sup> *But see* Letter from BIA to Appellant, Feb. 8, 1990, at 2, and unnumbered 4 (AR Tab 2) (listing 24 checks that BIA claims were cashed by Appellant).

<sup>3</sup> *See In the Matter of the Determination of Death and Heirship of Josephine Nora Bosen*, No. P94-656 (Dist. Ct. Tulsa County Oct. 13, 1994) (AR Tab 27).

<sup>4</sup> It appears that the matter was referred to the Secret Service, which is the investigative arm of the Department of the Treasury, and it may be that BIA believed that the Secret Service would recover the funds or that BIA determined that Appellant was judgment-proof.

Josephine's estate by Appellant in the amount of \$5,810.39. The Superintendent advised Appellant that she could request a hearing at which she could contest BIA's decision.

Appellant exercised her right to a hearing, which was held on August 25, 2008. Appellant was represented by counsel at the hearing. Following the hearing, the Superintendent issued his decision on October 7, 2008, in which he held Appellant responsible for cashing U.S. Treasury checks made payable to Josephine and dated between October 1987 and November 1989 in the aggregate amount of \$1,535.29 plus interest accrued of \$4,275.10. Appellant appealed the Superintendent's decision to the Regional Director. In her Decision, dated March 13, 2009, the Regional Director found that the only evidence in the record supporting the Superintendent's decision were copies of 10 cancelled checks endorsed by Appellant and which came to the aggregate sum of \$733.57. Therefore, the Regional Director affirmed the Superintendent's decision to hold Appellant liable for misappropriating funds that were payable to Josephine and she affirmed the decision to establish and encumber Appellant's IIM account; the Regional Director remanded the matter to the Superintendent to recalculate the amount of the encumbrance based on the 10 cancelled checks in the record.

Appellant appealed the Regional Director's Decision to the Board. Briefs were filed by Appellant as well as by the Regional Director.

### Discussion

We vacate the Regional Director's decision and remand this matter because, as the Regional Director concedes in her Answer Brief, the restricted funds in John's estate and which were held in trust for John, passed to Appellant as *unrestricted* funds. *See* Answer Brief at 13 ("the Secretary has no trust responsibility toward Appellant"). Because Appellant is an Indian who is less than one-half Indian blood from one or more of the Five Civilized Tribes, those funds inherited by Appellant from John lost their restricted status by operation of law at the time of his death. Therefore, BIA lacked authority to establish an IIM account for Appellant for the purpose of depositing unrestricted funds and to encumber the account pursuant to the procedures of 25 C.F.R. pt. 115, subpt. E.

An IIM account is an "interest bearing account *for trust funds* held by the Secretary that belong to a person who has an interest in *trust assets*." 25 C.F.R. § 115.002 (emphasis added) (definition of "Individual Indian Money (IIM) accounts"). *See generally, id.* pt. 115, subpt. F. However, funds belonging to Indians of the Five Civilized Tribes are and only remain restricted — and only may be held by the Secretary — "so long as [they] belong to Indians of the Five Civilized Tribes . . . of one-half or more Indian blood." Act of August 4, 1947, § 5, 61 Stat. 731, 733 (Act). Thus, when an Indian dies with restricted

funds, any such funds automatically lose their restricted status if inherited by an Indian of less than one-half Indian blood of the Five Civilized Tribes. In such cases and in the absence of authority to retain the funds, e.g., for the repayment of debts owed to the United States, BIA must distribute such funds at the end of probate “directly to . . . the decedent’s heirs . . .” 25 C.F.R. § 115.502. In contrast, funds that retain their restricted status – because they pass to an Indian of one-half or more Indian blood of the Five Civilized Tribes – may be deposited into an IIM account. *Id.*

Appellant argues that because BIA determined that she is an unrestricted heir, i.e., less than one-half Indian blood of the Five Civilized Tribes, BIA lacks authority to withhold Appellant’s funds from her. The Regional Director responds by admitting that BIA is holding Appellant’s inheritance from John in an IIM account for repayment of Appellant’s debt to BIA and “not as trustee.” Answer Brief at 13. The Regional Director relies on 25 C.F.R. § 115.502 for authority to deposit the unrestricted funds into an IIM account for Appellant. We conclude that BIA erred.

Section 115.502 explains what happens to an IIM account upon the death of the accountholder: After the estate is probated, the account is distributed to the decedent’s heirs, beneficiaries, or other persons or entities entitled by law to receive the proceeds. Notably, the regulation states that the funds are to be “paid directly to *or* deposited into an IIM account of the [persons or entities inheriting the funds].” 25 C.F.R. § 115.502 (emphasis added). By definition, IIM accounts are trust accounts, *see id.* § 115.002 (definition of IIM account), and BIA may only deposit funds into an IIM account if BIA is authorized to hold the subject funds in trust, *see id.* §§ 115.702 (“What specific sources of money will be accepted for deposit into a trust account?”), 115.703 (“We will not accept funds from sources that are not identified in § 115.702”). If BIA lacks authority to hold the funds in trust — e.g., because they pass in unrestricted status to an individual — then the funds must be paid directly to that individual or entity, unless some other authority or mechanism exists for BIA to hold the funds, i.e., in a non-trust, non-IIM account.

Thus, we conclude that BIA may not hold Appellant’s inheritance from John in an IIM account. BIA concedes it owes no trust responsibility with respect to these funds because Appellant meets the definition in the Act of an Indian for whom BIA emphatically may *not* hold such funds in trust. We find nothing in 25 C.F.R. pt. 115 that permits BIA to establish an IIM account for unrestricted funds.<sup>5</sup> For this reason, Appellant’s inheritance

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<sup>5</sup> Even a “special deposit account” is limited to “the deposit of *trust funds* that cannot immediately be credited to the rightful account holders.” 25 C.F.R. § 115.002 (definition of “special deposit account”) (emphasis added).

may not be sequestered in an IIM account established in her name for the purpose of repaying funds she allegedly misappropriated.<sup>6</sup>

Our jurisdiction is limited in this instance to determining whether BIA may utilize 25 C.F.R. pt. 115 to hold unrestricted funds in an IIM account and then encumber those funds pursuant to the provisions of subpart E. We conclude it may not do so. We need not reach the remaining arguments advanced by the parties.<sup>7</sup>

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's March 13, 2009, decision, directs BIA to close Appellant's IIM account, and remands this matter to the Regional Director for further consideration consistent with the Board's decision.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

<sup>6</sup> This is not to say that any funds in the account must be immediately released to Appellant, only that an IIM account in her name may not be utilized to hold the funds and that 25 C.F.R. pt. 115 has no applicability here. While the funds inherited by Appellant cannot thus be held for (and withheld from) Appellant under pt. 115, and without expressing any opinion on the merits of the parties' arguments, it may be that other avenues do exist for BIA to withhold and ultimately retain some or all of the funds inherited by Appellant. *See, e.g.*, 31 U.S.C. § 3716(d) (nothing in the Debt Collection Act, 31 U.S.C. § 3701 *et seq.*, prohibits the use of other administrative offset authority by Federal agencies pursuant to statute or common law).

<sup>7</sup> It may well be that the procedures under 25 C.F.R. pt. 115, subpt. E, for restricting IIM accounts afford Appellant all the process that she is due to permit BIA to claim the funds as payment for Appellant's debt. However, since the Regional Director remanded this matter to the Superintendent to recalculate the amount of Appellant's debt and because BIA has no authority to hold the funds in an IIM account, BIA must close Appellant's IIM account in the interim and determine whether and where it may continue to retain these funds until a final amount is determined and appropriate due process procedures have been exhausted.